

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 765**

Introduced by Fulton, 29.

Read first time January 06, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections  
2 28-1101 and 28-1107, Reissue Revised Statutes of  
3 Nebraska; to change provisions related to gambling; and  
4 to repeal the original sections.

5 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 28-1101, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           28-1101 As used in this article, unless the context  
4 otherwise requires:

5           (1) A person advances gambling activity if, acting other  
6 than as a player, he or she engages in conduct that materially aids  
7 any form of gambling activity. Conduct of this nature includes, but  
8 ~~shall not be~~ is not limited to, conduct directed toward (a) the  
9 creation or establishment of the particular game, contest, scheme,  
10 device, or activity involved, (b) the acquisition or maintenance of  
11 premises, paraphernalia, equipment, or apparatus therefor, or (c)  
12 engaging in the procurement, sale, or offering for sale within this  
13 state of any chance, share, or interest in a lottery of another  
14 state or government whether or not such chance, share, or interest  
15 is an actual lottery ticket, receipt, contingent promise to pay,  
16 order to purchase, or other record of such interest except as  
17 provided in the Nebraska County and City Lottery Act, the Nebraska  
18 Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the  
19 Nebraska Small Lottery and Raffle Act, the State Lottery Act, or  
20 section 9-701;

21           (2) Bookmaking ~~shall mean~~ means advancing gambling  
22 activity by unlawfully accepting bets from members of the public as  
23 a business upon the outcome of future contingent events;

24           (3) A person profits from gambling activity if, other  
25 than as a player, he or she accepts or receives money or other

1 property pursuant to an agreement or understanding with any person  
 2 whereby he or she participates or is to participate in the proceeds  
 3 of gambling activity;

4 ~~(4)~~ (4)(a) A person engages in gambling if he or she bets  
 5 something of value upon:

6 (i) ~~The~~ the outcome of a future event, which outcome is  
 7 determined by an element of chance; ~~or upon the~~

8 (ii) ~~The~~ outcome of a game, contest, or election, or  
 9 conducts or participates in any bingo, lottery by the sale of  
 10 pickle cards, lottery, raffle, gift enterprise, or other scheme  
 11 not authorized or conducted in accordance with the Nebraska Bingo  
 12 Act, the Nebraska County and City Lottery Act, the Nebraska Lottery  
 13 and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska  
 14 Small Lottery and Raffle Act, the State Lottery Act, or section  
 15 9-701; ~~or~~

16 (iii) ~~The operation or play of a gambling device;~~

17 (b) ~~A~~ but a person does not engage in gambling by:

18 ~~(a)~~ (i) Entering into a lawful business transaction;

19 ~~(b)~~ Playing an amusement device or a coin-operated  
 20 mechanical game which confers as a prize an immediate, unrecorded  
 21 right of replay not exchangeable for something of value;

22 ~~(c)~~ (ii) Conducting or participating in a prize contest;

23 or

24 ~~(d)~~ (iii) Conducting or participating in any bingo,  
 25 lottery by the sale of pickle cards, lottery, raffle, or gift

1 enterprise conducted in accordance with the Nebraska Bingo Act,  
2 the Nebraska County and City Lottery Act, the Nebraska Lottery  
3 and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska  
4 Small Lottery and Raffle Act, the State Lottery Act, or section  
5 9-701;

6 (5) Gambling device ~~shall mean any~~ means:

7 (a) (i) Any device, machine, paraphernalia, writing,  
8 paper, instrument, article, or equipment that is used or usable for  
9 engaging in gambling, whether that activity consists of gambling  
10 between persons or gambling by a person involving the playing of a  
11 machine or (ii) - Gambling device shall also include any mechanical  
12 gaming device, computer gaming device, electronic gaming device, or  
13 video gaming device which, through the application of an element  
14 of chance, has the capability of awarding something of value,  
15 free games redeemable for something of value, instant-win tickets  
16 which also provide the possibility of participating in a subsequent  
17 drawing or event, or tickets or stubs redeemable for something  
18 of value, except as authorized in the furtherance of parimutuel  
19 wagering. Gambling device does not include any device or machine  
20 where a person stands to win or lose, based predominantly on the  
21 skill of the operator, a noncash award valued at ten dollars or  
22 less per play. The award shall not be made in the form of a product  
23 containing either alcohol or tobacco or in the form of a redeemable  
24 item that can be exchanged for cash or a product containing either  
25 alcohol or tobacco; or ~~Supplies,~~

1           (b) Supplies, equipment, cards, tickets, stubs, and other  
2 items used in any bingo, lottery by the sale of pickle cards,  
3 other lottery, raffle, or gift enterprise conducted in accordance  
4 with the Nebraska Bingo Act, the Nebraska County and City Lottery  
5 Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card  
6 Lottery Act, the Nebraska Small Lottery and Raffle Act, the State  
7 Lottery Act, or section 9-701 are not gambling devices within this  
8 definition;

9           (6) Something of value ~~shall mean~~ means any money or  
10 property, any token, object, or article exchangeable for money or  
11 property, or any form of credit or promise directly or indirectly  
12 contemplating transfer of money or property or of any interest  
13 therein, or involving extension of a service or entertainment; and

14           (7) Prize contest ~~shall mean~~ means any competition in  
15 which one or more competitors are awarded something of value as  
16 a consequence of winning or achieving a certain result in the  
17 competition and (a) the value of such awards made to competitors  
18 participating in the contest does not depend upon the number of  
19 participants in the contest or upon the amount of consideration, if  
20 any, paid for the opportunity to participate in the contest or upon  
21 chance and (b) the value or identity of such awards to be made to  
22 competitors is published before the competition begins.

23           Sec. 2. Section 28-1107, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25           28-1107 (1) A person commits the offense of possession

1 of a gambling device if he or she manufactures, sells, transports,  
2 places, possesses, or conducts or negotiates any transaction  
3 affecting or designed to affect ownership, custody, or use of any  
4 gambling device, knowing that it shall be used in the advancement  
5 of unlawful gambling activity.

6 ~~(2) This section shall not apply to any coin-operated~~  
7 ~~mechanical gaming device, computer gaming device, electronic gaming~~  
8 ~~device, or video gaming device which has the capability of awarding~~  
9 ~~free games, which is intended to be played and is in fact played~~  
10 ~~for amusement only, and which may allow the player the right to~~  
11 ~~replay such gaming device at no additional cost, which right to~~  
12 ~~replay shall not be considered money or property, except that~~  
13 ~~such mechanical game (a) can be discharged of accumulated free~~  
14 ~~replays only by reactivating the game for one additional play for~~  
15 ~~each accumulated free replay and (b) makes no permanent record~~  
16 ~~directly or indirectly of free replays so awarded. Notwithstanding~~  
17 ~~any other provisions of this section, any mechanical game or device~~  
18 ~~classified by the federal government as an illegal gambling device~~  
19 ~~and requiring a federal Gambling Device Tax Stamp as required by~~  
20 ~~the Internal Revenue Service in its administration of 26 U.S.C.~~  
21 ~~4461 and 4462, amended July 1, 1965, by Public Law 89-44, are~~  
22 ~~hereby declared to be illegal and excluded from the exemption~~  
23 ~~granted in this section.~~

24 ~~(3) (2) Possession of a gambling device is a Class II~~  
25 ~~misdemeanor.~~

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- 1                   Sec. 3. Original sections 28-1101 and 28-1107, Reissue
- 2 Revised Statutes of Nebraska, are repealed.